Customs Bulletin

Regulations, Rulings, Decisions, and Notices concerning Customs and related matters

and Decisions

of the United States Court of Customs and Patent Appeals and the United States Customs Court

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Tariff Commission Notice

DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

(T.D. 74-231)

Ports of entry—Customs Regulations amended

Changes in the Customs Field Organization, section 1.2(c), Customs Regulations amended

DEPARTMENT OF THE TREASURY,
Washington, D.C., September 5, 1974.

TITLE 19—CUSTOMS DUTIES

CHAPTER I—UNITED STATES CUSTOMS SERVICE

PART 1—GENERAL PROVISIONS

On April 25, 1974, there was published in the Federal Register (39 FR 14610), a notice of a proposed change in Customs Region VI, which would consolidate the Beaumont, Orange, Port Arthur, and Sabine, Texas, Customs ports of entry into a single Beaumont, Orange, Port Arthur, Sabine Customs port of entry.

After consideration of the comments received in response to the notice, it has been decided to establish the consolidated port of entry, as proposed. However, in order to facilitate accurate recordkeeping within the consolidated port of entry, each port within the consolidated port of entry will maintain its existing port code number. Also, it should be noted that the status of the port of Lake Charles, Louisiana, also in the Port Arthur Customs district, will not be affected by the consolidation described herein.

Accordingly, by virtue of the authority vested in the President by section 1 of the Act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2), and delegated to the Secretary of the Treasury by Executive Order No. 10289, September 17, 1951 (3 CFR Ch. II), and pursuant to the authority provided by Treasury Department Order No. 190, Rev. 9 (38 FR 17517), the Beaumont, Orange, Port Arthur, Sabine Customs port of entry is established. The geographical limits of the new port encompass all of the area falling, before this consolidation, within the port limits of Beaumont, Orange, Port Arthur, and Sabine,

U.S. Customs Service

Texas, and include all of Jefferson County and Orange County, Texas.

To reflect this change, the table in section 1.2(c) of the Customs Regulations is hereby amended by substituting "BEAUMONT, ORANGE, PORT ARTHUR, SABINE, TEX. (including territory described in T.D. 74-231)" for "PORT ARTHUR, TEX. (including territory described in T.D. 54137).", "Beaumont, Tex. (E.O. 4502, Sept. 1, 1926) (including territory described in T.D. 54137).", "Orange, Tex. (E.O. 7495, Nov. 14, 1936; 1 F.R. 1867) (including territory described in T.D. 54137).", and "Sabine, Tex. (including territory described in T.D. 54137).", in the column headed "Ports of entry" in the Port Arthur, Texas, Customs district (Region VI). (Sec. 1, 37 Stat. 434, sec. 1, 38 Stat. 623, as amended; 19 U.S.C. 1, 2)

It is desirable to make the benefits of the consolidated Customs port of entry available to the public as soon as possible. Therefore good cause is found for dispensing with the delayed effective date provision of 5 U.S.C. 553(d).

Effective date. This amendment shall be effective upon publication in the Federal Register.

(ADM-9-03)

DAVID R. MACDONALD,
Assistant Secretary of the Treasury.

[Published in the Federal Register September 12, 1974 (39 FR 32903)]

(T.D. 74-232)

Cotton textiles—Restriction on entry

Restriction on entry of cotton textiles and cotton textile products in certain categories manufactured or produced in Mexico

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., September 6, 1974.

There is published below directive of August 27, 1974, received by the Commissioner of Customs from the Chairman, Committee for the Implementation of Textile Agreements, regarding levels of restraint for cotton textiles and cotton textile products in certain categories manufactured or produced in Mexico. This directive further amends but does not cancel that Committee's directive of February 22, 1974 (T.D. 74-81).

This directive was published in the Federal Register on September 3, 1974 (39 FR 31943), by the Committee.

(QUO-2-1)

R. N. MARRA,
Director,
Duty Assessment Division.

THE ASSISTANT SECRETARY OF COMMERCE
WASHINGTON, D.C. 20230

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

August 27, 1974.

COMMISSIONER OF CUSTOMS
Department of the Treasury
Washington, D.C. 20229

DEAR MR. COMMISSIONER:

This directive further amends, but does not cancel, the directive issued to you on February 22, 1974 by the Chairman of the Committee for the Implementation of Textile Agreements pursuant to the offer by the United States Government to all of its bilateral cotton textile agreement partners to export on a one-time basis additional quantities of cotton yarn and/or fabric. This directive was previously amended on April 22, 1974 and June 4, 1974.

Pursuant to the foregoing directive of February 22, 1974, you are hereby directed to permit entry of the following ex-quota amounts from Mexico in Categories 9/10, 22/23, and 26/27 and part 64 (knit fabrics) during the twelve-month period which began on May 1, 1974:

Category	*Ex-Quota Amount*
5-27, pt 64 (kt fab)	3,490,000 square yards
9/10	1,343,000 square yards
22/23	582,000 square yards
26/27 and part of 64 (Knit fabrics)	1,565,000 square yards

The actions taken with respect to the Government of Mexico and with respect to imports of cotton textiles and cotton textile products from Mexico have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions,

fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

SETH M. BODNER,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Resources and Trade Assistance

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(T.D. 74-233)

Countervailing duties—Non-rubber footwear from Brazil

Notice of countervailing duties to be imposed under section 303, Tariff Act of 1930, by reason of the payment or bestowal of a bounty or grant upon the manufacture, production, or exportation of nonrubber footwear from Brazil

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C.

TITLE 19—CUSTOMS DUTIES

CHAPTER 1—UNITED STATES CUSTOMS SERVICE

PART 159—LIQUIDATION OF DUTIES

In the Federal Register of March 8, 1974 (39 F.R. 9213), the Commissioner of Customs announced that information had been received pursuant to the provisions of section 159.47(b) of the Customs Regulations (19 CFR 159.47(b)) which appeared to indicate that certain payments, bestowals, rebates, or refunds granted by the Government of Brazil upon the manufacture, production, or exportation of nonrubber footwear constitute the payment or bestowal of a bounty or grant directly or indirectly, within the meaning of section 303 of the Tariff Act of 1930 (19 U.S.C. 1303), upon the manufacture, production, or exportation of the merchandise to which the payments, bestowals, rebates, or refunds apply. The notice provided interested parties 30 days from the date of publication to submit any relevant data, views, or arguments with respect to the existence or nonexistence and the net amount of a bounty or grant.

In the Federal Register of April 26, 1974 (39 F.R. 14734), the time period for the written submissions was extended from 30 days to 90 days.

A investigation was conducted pursuant to section 159.47(c) of the Customs Regulations (19 CFR 159.47(c)).

After consideration of all information received, the United States Customs Service is satisfied that exports of non-rubber footwear from Brazil are subject to bounties or grants within the meaning of section 303.

Accordingly, notice is hereby given that non-rubber footwear manufactured in Brazil, imported directly or indirectly from Brazil, if entered for consumption or withdrawn from warehouse for consumption after the expiration of 30 days after publication of this notice in the Customs Bulletin, will be subject to the payment of countervailing duties equal to the net amount of any bounty or grant determined or estimated to have been paid or bestowed.

In accordance with section 303, until further notice the amount of such bounty or grant under the information presently available has been estimated to be 12.3 percent of the f.o.b. or ex-works price to the United States of shoes manufactured by firms whose export sales account for 40 percent or less of the value of their total sales and 4.8 percent of the f.o.b. or ex-works price to the United States of shoes manufactured by firms whose export sales account for more than 40 percent of the value of their total sales.

Effective on the 31st day after the date of publication of the notice in the Customs Bulletin and until further notice, upon the entry for consumption or withdrawal from warehouse for consumption of such dutiable non-rubber footwear, manufactured in Brazil, imported directly or indirectly from Brazil which benefits from such bounties or grants, there shall be collected, in addition to any other duties estimated or determined to be due, countervailing duties in the amounts estimated in accordance with the above declaration. To the extent that it has been or can be established to the satisfaction of the Commissioner of Customs that imports of shoes manufactured by a particular firm are the recipients of a bounty or grant smaller than the amount which would otherwise be applicable under the above declaration, the smaller amount so established shall be assessed and collected on imports of such shoes.

Any merchandise subject to the terms of this order shall be deemed to have benefited from a bounty or grant if such bounty or grant has been or will be paid, credited or bestowed directly or indirectly, upon the manufacture, production, or exportation of non-rubber footwear manufactured in Brazil.

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The table in section 159.47(f) of the Customs Regulations (19 CFR 159.47(f)) is amended by inserting under column headed "country," the name "Brazil" and by inserting for Brazil "Footwear, non-rubber" in the column headed "Commodity," the number of this Treasury Decision in the column headed "Treasury Decision," and the words "Bounty Declared—Rate" in the column headed "Action."

(R.S. 251, as amended, secs. 303, 624: 46 Stat. 687, 759, 19 U.S.C. 66, 1303, 1624.)

(APP-4-05)

G. R. DICKERSON,
Acting Commissioner of Customs.

Approved September 9, 1974:
DAVID R. MACDONALD,
Assistant Secretary of the Treasury.

[Published in the Federal Register September 2, 1974 (39 FR 32903)]

(T.D. 74-234)

Countervailing duties—Bottled green olives from Spain

Notice of countervailing duties to be imposed under section 303, Tariff Act of 1930, by reason of the payment or bestowal of a bounty or grant upon the manufacture, production or exportation of bottled green olives from Spain.

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C.

TITLE 19—CUSTOMS DUTIES

CHAPTER 1—UNITED STATES CUSTOMS SERVICE

PART 159—LIQUIDATION OF DUTIES

In the Federal Register of July 6, 1974 (39 F.R. 26046), the Commissioner of Customs announced that information had been received in proper form pursuant to section 159.47(b) of the Customs Regulations (19 CFR 159.47(b)) which appeared to indicate that certain payments or bestowals made by the Government of Spain on the exportation from Spain of bottled green olives constitute the payment or bestowal of a bounty or grant, directly or indirectly, within the

meaning of section 303 of the Tariff Act of 1930 (19 U.S.C. 1303) upon the manufacture, production or exportation of the merchandise to which the payments apply. The notice provided interested parties 30 days from the date of publication to submit data, views, or arguments with regard to the existence or non-existence and the net amount of a bounty or grant. A subsequent notice (39 F.R. 30364) extended the period for comments an additional 14 days.

An investigation was conducted pursuant to section 159.47(c) of the Customs Regulations (19 CFR 159.47(c)).

After consideration of all information received, the United States Customs Service is satisfied that exports of bottled green olives from Spain are subject to bounties or grants within the meaning of section 303.

Accordingly, notice is hereby given that bottled green olives imported directly or indirectly from Spain, if entered for consumption or withdrawn from warehouse for consumption after the expiration of 30 days after publication of this notice in the Customs Bulletin, will be subject to payment of countervailing duties equal to the net amount of any bounty or grant determined or estimated to have been paid or bestowed.

In accordance with section 303, the amount of the bounties or grants, under the information presently available, has been determined to be 2.9 percent of the f.o.b. or ex-works price to the United States.

Effective on the 31st day after the date of publication of the notice in the Customs Bulletin and until further notice, upon the entry for consumption of such dutiable bottled green olives imported directly or indirectly from Spain which benefit from these bounties or grants, there shall be collected, in addition to any other duties estimated or determined to be due, countervailing duties in the amount ascertained in accordance with the above declaration.

Any merchandise subject to the terms of this order shall be deemed to have benefited from a bounty or grant if such bounty or grant has been or will be paid or credited, directly or indirectly, upon the manufacture, production, or exportation of such bottled green olives from Spain.

The table in section 159.47(f) of the Customs Regulations (19 CFR 159.47(f)) is amended by inserting under the column headed "Country," the name "Spain" and by inserting for Spain the words "bottled green olives" in the column headed "Commodity," the number of this Treasury decision in the column headed "Treasury Decision," and the words "Bounty Declared—Rate," in the column headed "Action."

meaning of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) upon the manufacture, production or exportation of the merchandise to which the petitions apply. The notice provided interested parties 30 days from the date of publication to submit data, views, or arguments with respect to [illegible]

[illegible]

(R.S. 251, secs. 303, 624; 46 Stat. 687, 759; 19 U.S.C. 66, 1303, 1624).

(APP-4-05)

VERNON D. ACREE,
Commissioner of Customs.

Approved September 9, 1974:
DAVID R. MACDONALD,
Assistant Secretary of the Treasury.

[Published in the Federal Register September 12, 1974 (39 FR 32904)]

(T.D. 74-235)

Countervailing duties—Non-rubber footwear from Spain

Notice of countervailing duties to be imposed under section 303, Tariff Act of 1930, by reason of the payment or bestowal of a bounty or grant upon the manufacture, production or exportation of non-rubber footwear from Spain

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C.

TITLE 19—CUSTOMS DUTIES

CHAPTER 1—UNITED STATES CUSTOMS SERVICE

PART 159—LIQUIDATION OF DUTIES

In the Federal Register of July 16, 1974 (39 F.R. 26046), the Commissioner of Customs announced that information had been received in proper form pursuant to section 159.47(b) of the Customs Regulations (19 CFR 159.47(b)) which appeared to indicate that certain payments or bestowals made by the Government of Spain on the exportation from Spain of non-rubber footwear constitute the payment or bestowal of a bounty or grant, directly or indirectly, within the meaning of section 303 of the Tariff Act of 1930 (19 U.S.C. 1303) upon the manufacture, production or exportation of the merchandise to which the payments apply. The notice provided interested parties 30 days from the date of publication to submit data, views, or arguments with regard to the existence or nonexistence and the net amount of a bounty or grant. A subsequent notice (39 F.R. 30364) extended the period for comments an additional 14 days.

In the Federal Register of August 14, 1974 (39 F.R. 29205), an "Amendment of Notice of Countervailing Duty Proceedings" was pub-

lished to more specifically define the merchandise under consideration as "non-rubber footwear" from Spain.

An investigation was conducted pursuant to section 159.57(c) of the Customs Regulations (19 CFR 159.47(c)).

After consideration of all information received the United States Customs Service is satisfied that exports of non-rubber footwear from Spain are subject to bounties or grants within the meaning of section 303.

Accordingly, notice is hereby given that non-rubber footwear imported directly or indirectly from Spain, if entered for consumption or withdrawn from warehouse for consumption after the expiration of 30 days after publication of this notice in the Customs Bulletin, will be subject to payment of countervailing duties equal to the net amount of any bounty or grant determined or estimated to have been paid or bestowed.

In accordance with section 303, the amount of the bounties or grants, under the information presently available, has been determined to be 3 percent of the f.o.b. or ex-works price to the United States.

Effective on the 31st day after the date of publication of the notice in the Customs Bulletin and until further notice, upon the entry for consumption of such dutiable non-rubber footwear imported directly or indirectly from Spain which benefit from these bounties or grants, there shall be collected, in addition to any other duties estimated or determined to be due, countervailing duties in the amount ascertained in accordance with the above declaration.

Any merchandise subject to the terms of this order shall be deemed to have benefited from a bounty or grant if such bounty or grant has been or will be paid or credited, directly or indirectly, upon the manufacture, production, or exportation of such non-rubber footwear from Spain.

The table in section 159.47(f) of the Customs Regulations (19 CFR 159.47(f)) is amended by inserting under the column headed "Country," the name "Spain" and by inserting for Spain the words "non-rubber footwear" in the column headed "Commodity," the number of this Treasury decision in the column headed "Treasury Decision," and the words "Bounty Declared—Rate" in the column headed "Action."

(R.S. 251, secs. 303, 624; 46 Stat. 687, 759; 91 U.S.C. 66, 1303, 1624.)

(APP-4-05)

VERNON D. ACREE,
Commissioner of Customs.

Approved September 9, 1974:

DAVID R. MACDONALD,
Assistant Secretary of the Treasury.

[Published in the Federal Register September 12, 1974 (39 FR 32904)]
555-219—74——3

(T.D. 74-236)

Petitions by American manufacturers, producers, and wholesalers—Customs Regulations amended

Section 175.21, Customs Regulations, amended to require publication of a notice in the Federal Register when a petition is filed by an American manufacturer, producer, or wholesaler under section 516, Tariff Act of 1930, as amended

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C.

TITLE 19—CUSTOMS DUTIES

CHAPTER I—UNITED STATES CUSTOMS SERVICE

PART 175—PETITIONS BY AMERICAN MANUFACTURERS, PRODUCERS, AND WHOLESALERS

On October 3, 1973, a notice of proposed rulemaking was published in the Federal Register (38 FR 27404) setting forth proposed amendments to section 175.21 of the Customs Regulations (19 CFR 175.21), which would require that notice be given to interested parties when a petition is filed by an American manufacturer, producer, or wholesaler pursuant to section 516, Tariff Act of 1930, as amended. The giving of notice would permit a more informed decision on the petition, and would result in a more equitable procedure by permitting interested parties to present their views on the questions raised by the petition. The amendment provides for the publication of a notice in the Federal Register that a petition has been filed under section 516, and provides an opportunity for comment by interested parties.

After reviewing the comments received in regard to the proposed amendment, the wording of section 175.21(b) has been further amended to specify that a petition filed by an American manufacturer is to be made available to interested parties for inspection in accordance with section 103.8(b) of the Customs Regulations. In addition, the reference to section 103.7 of the Customs Regulations, in proposed section 175.21(b), is changed to "103.10" to conform with the revision of Part 103 set forth in T.D. 73-310 (38 FR 31167).

Accordingly, section 175.21 of the Customs Regulations (19 CFR 175.21) is amended to read as follows:

§ 175.21 Notice of filing of petition, inspection of petition, and inspection of documents and papers.

(a) *Notice of filing of petition.* Upon the filing of a petition, a notice shall be published in the Federal Register setting forth that

a petition has been filed by an American manufacturer, producer, or wholesaler, identifying the merchandise which is the subject of the petition, and its present and claimed appraised value or classification or rate of duty. The notice shall invite interested persons to make such written submissions as they desire within such time as is specified in the notice.

(b) *Inspection of petition; inspection of documents and papers.* The petition filed by an American manufacturer, producer, or wholesaler will be made available for inspection by interested parties in accordance with the provisions of section 103.8(b) of this chapter. However, neither a petitioner nor other interested parties shall in any case be permitted to inspect documents or papers of the consignee or importer which are exempted from disclosure by section 103.10 of this chapter.

(R.S. 251, as amended, secs. 516, 624, 46 Stat. 735, as amended, 759; 5 U.S.C. 552, 19 U.S.C. 66, 1516, 1624)

Effective date. These amendments shall become effective 30 days after publication in the Federal Register.

(ADM-9-03)

G. R. DICKERSON,
Acting Commissioner of Customs.

Approved September 9, 1974:
DAVID R. MACDONALD,
Assistant Secretary of the Treasury.

[Published in the Federal Register September 16, 1974 (39 FR 33207)]

(T.D. 74-237)

Countervailing Duties—X-radial steel belted tires from Canada

Notice of new estimated rate of countervailing duties under section 303, Tariff Act of 1930, by reason of the payment or bestowal of a bounty or grant upon the manufacture, production, or exportation of X-radial steel belted tires from Canada

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C.

TITLE 19—CUSTOMS DUTIES

CHAPTER I—UNITED STATES CUSTOMS SERVICE

PART 159—LIQUIDATION OF DUTIES

In the Federal Register of January 8, 1973 (38 F.R. 1018), the Commissioner of Customs gave notice that the United States Customs

Service had determined that exports of X-radial steel belted tires, manufactured by Michelin Tire Manufacturing Company of Canada, Ltd., are subject to bounties or grants within the meaning of section 330, Tariff Act of 1930 (19 U.S.C. 1303).

At that time, notice was given that X-radial steel belted tires, manufactured by Michelin Tire Manufacturing Company of Canada, Ltd., imported directly or indirectly from Canada, if entered for consumption or withdrawn from warehouse for consumption after the expiration of 30 days after publication of that notice in the Customs Bulletin, would be subject to the payment of countervailing duties equal to the net amount of any bounty or grant determined or estimated to have been paid or bestowed.

In accordance with setcion 303, the amount of such bounty or grant was estimated to be 6.6 percent of the f.o.b. value of each tire. On the basis of infromation presently available, the amount of such bounty or grant applicable to shipments of X-radial steel belted tires, manufactured by Michelin Tire Manufacturing Company of Canada, Ltd., imported directly or indirectly from Canada, entered for consumption or withdrawn from warehouse on or after January 1, 1974, is estimated to be 3.7 percent of the f.o.b. value of each tire. Accordingly, until further notice, upon entry for consumption or withdrawal from warehouse for consumption of such dutiable X-radial steel belted tires, manufactured by Michelin Tire Manufacturing Company of Canada, Ltd., imported directly or indirectly from Canada which benefit from such bounties or grants, there shall be collected, in addition to any other duties estimated or determined to be due, estimated countervailing duties of 3.7 percent of the f.o.b. value of each tire.

The liquidation of all entries for consumption or withdrawals from warehouse for consumption of such dutiable X-radial steel belted tires, manufactured by Michelin Tire Manufacturing Company of Canada, Ltd., imported directly or indirectly from Canada which benefit from such bounties or grants and are subject to the order shall continue to be suspended pending declarations of the net amounts of the bounties or grants paid or bestowed.

The table in section 159.47(f) of the Customs Regulations (19 CFR 159.47(f)) is amended by inserting after the last entry for Canada "X-radial steel belted tires manufactured by Michelin Tire Manufacturing Company of Canada, Ltd.", the number of this treasury decision in the column headed "Treasury Decision," and the words "New estimated rate" in the column headed "Action."

(R.S. 251, as amended; secs. 303, 624, 46 Stat. 687, 759; 19 U.S.C. 66, 1303, 1624.)

(APP-2-04)

VERNON D. ACREE,
Commissioner of Customs.

Approved September 10, 1974:

PETER O. SUCHMAN,
Acting Deputy Assistant Secretary of the Treasury.

[Published in the Federal Register September 16, 1974 (39 FR 33207)]

555-219- 74——4

Decisions of the United States Customs Court

Customs Decisions

(C.D. 4556)

STYLO MATCHMAKERS INTERNATIONAL, INC. *v.* UNITED STATES

Injection molded golf shoes

WEIGHT OF EVIDENCE—LEGISLATIVE HISTORY—RULE OF *Ejusdem Generis*

A polyvinyl chloride injection molded (one continuous piece of material) guaranteed waterproof golf shoe exported from England was classified as "other footwear" under TSUS item 700.53. The

plaintiff sought to have it classified as "other footwear" under item 700.55. The most persuasive testimony at the trial was that the import was considered a golf shoe worn for protection against wet weather. A comparison of the language of the two competing tariff items indicated a policy of containment of "other footwear" which is "waterproof" in item 700.53, and containment of "other footwear" which is "non-waterproof" in item 700.55. A review of the legislative history reconciled any apparent conflict between the two competing tariff items and indicated support for the policy of the respective containments. The application of the *ejusdem generis* (things of the same kind) rule to the exemplars listed in item 700.53 and the imported merchandise also supported the finding of the district director.

Held: Where the weight of the evidence, the legislative history and the rule of *ejusdem generis* place the imported merchandise in the class of "other footwear" which is waterproof, "designed to be worn . . . in lieu of, other footwear as a protection against water," said merchandise is properly classified under TSUS item 700.53.

Court No. 72-10-02117

Port of Boston

[Judgment for defendant.]

(Decided August 27, 1974)

Barnes, Richardson & Colburn (*Joseph Schwartz* and *Irving Levine* of counsel) for the plaintiff.

Carla A. Hills, Assistant Attorney General (*Frank J. Desiderio*, trial attorney), for the defendant.

Lamb & Lerch (*David A. Golden*), for amicus curiae.

RICHARDSON, Judge: The merchandise in this action consists of polyvinyl chloride injection molded (one continuous piece of material) golf shoes manufactured in and exported from England, and entered at Boston on December 7, 1970. They are described on the commercial invoice as "style PP30 Mens black/white waterproof super greensneaker."

The shoes were classified in liquidation under TSUS item 700.53 at the duty rate of 37.5 percent ad valorem. Item 700.53, with its superior heading, reads as follows:

> Footwear (whether or not described elsewhere in this subpart) which is over 50 percent by weight of rubber or plastics or over 50 percent by weight of fibers and rubber or plastics with at least 10 percent by weight being rubber or plastics:

Hunting boots, galoshes, rainwear, and *other footwear designed to be worn* over, or *in lieu of, other footwear as a protection against water*, oil, grease, or chemicals or cold *or inclement weather*, all the foregoing having soles and uppers of which over 90 percent of the exterior surface area is rubber or plastics (except footwear with uppers of nonmolded construction formed by sewing the parts thereof together and having exposed on the outer surface a substantial portion of functional stitching) : [Emphasis supplied.]

* * * * * * *

700.53 Other ---------- 37.5% ad val.

Plaintiff claims the merchandise is properly dutiable under TSUS item 700.55 as modified by T.D. 68–9, at the duty rate of 8.5 percent ad valorem. Item 700.55, with its superior heading, reads as follows:

Other footwear (except footwear having uppers of which over 50 percent of the exterior surface area is leather) :

700.55 Having uppers of which over 90 percent of the exterior surface area is rubber or plastics (*except footwear* having foxing or a foxing-like band applied or *molded at* the sole and overlapping the upper) --- 8.5% ad val. [Emphasis supplied.]

The domestic interest was represented by Rubber Manufacturers Association through its counsel as amicus curiae.

All parties concede that the issue is whether or not the imported footwear is "footwear designed to be worn . . . in lieu of, other footwear as a protection against water . . . or cold or inclement weather . . . ."

The plaintiff produced two witnesses and introduced ten exhibits into evidence. The defendant produced six witnesses and introduced six exhibits into evidence.

The plaintiff's first witness, Ross L. Humphrey, director of public relations for the plaintiff, Stylo Matchmakers International, Inc., testified that he placed orders for shoes with Stylo Matchmakers International Limited in England, accepted the orders of shoes, han-

dled orders from his company's clients—professional golfers and retail stores—and represented his company at trade fairs and trade meetings. He stated that the business of his company, which had been in operation for three years, was to import and distribute Stylo Matchmakers' golf shoes in all states except Alaska and Hawaii. A black and white, injection molded, guaranteed waterproof, golf shoe, with eleven metal spikes placed on each shoe and a kiltie over the eyelets, which is representative of the imported merchandise, was received in evidence as plaintiff's exhibit 1. Other exhibits introduced through Humphrey were exhibit 2, a collection of invoices of exhibit 1 golf shoes shipped to professional golfers by the plaintiff; exhibit 3, a brochure illustrating exhibit 1, the golf shoe in issue; exhibit 4, a price list that accompanied the brochure; exhibit 5, an advertisement of the shoe in issue; exhibit 6, a galosh; exhibits 7 and 8, two types of golf rubbers— one with metal spikes and one with rubber tips in place of spikes, which are worn over regular street shoes.

Humphrey stated that he had worn golf shoes like exhibit 1 in all types of weather. He admitted his feet would sweat more in exhibit 1 than in a leather golf shoe because the waterproof shoe would prevent perspiration from penetrating to the outside, but the shoe would not be uncomfortable.

Plaintiff's second witness, Richard E. Eagan, an insurance man, testified that he has been playing golf for 35 years, and has been wearing exhibit 1 in wet and dry weather since April 1973. He said that you only have to have one pair of golf shoes when you have exhibit 1.

Defendant's exhibit A is a letter to golf professionals from Stylo Matchmakers International which refers to a style like exhibit 1 as "guaranteed waterproof" which has been proven "in more than four years of usage on the wet British courses."

The defendant's first witness, Frank M. LeCompte, vice-president in charge of engineering of Tingley Rubber Corporation, explained that the pull-over golf rubbers illustrated in exhibits 7 and 8 are made by the compression molding process which he said is similar to the injection molding process used in manufacturing in exhibit 1. He also identified a flier, exhibit B, which his company encloses with exhibit 7 explaining how useful the rubber is on a soggy turf; and exhibit C an advertisement of exhibit 7 which appears in a trade magazine.

The defendant's second witness, Arthur M. Bell, vice-president of Foot-Joy Incorporated for sales and marketing golf shoes to professional accounts, identified exhibit D, a rubber, waterproof golf shoe made in England and sold by Foot-Joy to be worn in wet weather or when the ground has heavy dew on it. He compared it to exhibit 1 and stated that both are wet weather golf shoes and he would not recommend either one for hot or fair weather as they do not breathe or

allow air to circulate within the inside. He also identified exhibit E, a Goodyear welt leather golf shoe which is not waterproof.

Defendant's third witness, Philip G. Brown, assistant to the divisional president of the Consumer Products Division of Uniroyal Incorporated, is a chemist who has been concerned with product development and control for 36 years. He described exhibit 1 as "an injection molded shoe of some synthetic material as opposed to rubber," and exhibit D as "not an injection molded shoe," but made of several pieces of vulcanized rubber into one piece. Both exhibits 1 and D are chemically bonded, making them waterproof. On cross-examination Mr. Brown identified exhibit 9 which is a Uniroyal catalogue showing that leather and polyvinyl chloride golf shoes were both marketed as waterproof golf shoes by Uniroyal. He stated that laboratory tests had established that vinyl material was hotter than leather and does not pass moisture through itself as does leather.

Defendant's fourth witness, Ralph H. LaCroix, national sales and commodity manager for the Golf Division of Uniroyal Incorporated, said that Uniroyal withdrew the advertised waterproof golf shoe in March 1973, because the shoe failed and was not in fact waterproof. He said his company could not get good adhesion between upper leather and the sole, and with use the protective coating that was processed into it lost its effectiveness, and water leaked through the leather. According to his experience on golf courses as a participant in tournaments he said he observed the average golfer has between four and five pairs of shoes. An average golfer was described as one who plays once a week or more.

Defendant's fifth witness, Harold Berk, president of Songo Shoe Manufacturing Corporation, appeared pursuant to a subpoena. He testified that his company manufactures street and golf shoes, including a waterproof shoe, exhibit F, shown also in an advertisement sheet, exhibit 10. He described exhibit 1 as a replacement of a rubber, and that his company's golf shoe, exhibit F, is manufactured as a replacement of a leather shoe. The bottom of exhibit F is clear vinyl, injection molded, and the upper is a calendered polyvinyl chloride injection molded to the bottom. It does not breathe, and is sold as a regular golf shoe.

Defendant's sixth witness, John Neville, Jr., assistant pro to George Lane at a golf club, and a member of the Professional Golfers' Association of America, said he sold shoes such as exhibit 1 in his pro shop as "a second shoe or a water shoe." He also said the average member of his golf club had an average of three or four pairs of shoes, one of which would probably be a water or protective shoe.

From the testimony of all of the witnesses for both plaintiff and defendant exhibit 1 is "a type of golf shoe." This conclusion, however,

does not resolve the controversy, and a comparative analysis of the wording of the two competing tariff items—700.53 and 700.55—and their legislative history is required for an understanding of Congressional intent. Both tariff items refer to "other footwear" of "rubber or plastics."

Item 700.53 embraces "other footwear" (*whether or not described elsewhere in this subpart*) which is over 50 percent by weight of rubber or plastics." [Emphasis supplied.] Exhibit 1 is made of a composition which may be described broadly as over 50 percent by weight of plastics and could be classified under item 700.53 according to this standard. Item 700.55 also embraces "other footwear" which has "uppers of which over 90 percent of the exterior surface area is . . . plastic." Without more it might well be argued that exhibit 1 should likewise be classified under item 700.55. To say only that the language "whether or not described elsewhere in this subpart" following other "footwear" in item 700.53 negates the possibility of classifying any "other footwear" under any other item in subpart A would render the use of the term in item 700.55 meaningless. This makes imperative a reference to the legislative history to ascertain to which of the two "other footwear" tariff items exhibit 1 should be assigned.

The Report of the Tariff Commission in its Tariff Classification Study, to the Chairmen of the Committee on Ways and Means of the House and the Committee on Finance of the Senate with reference to schedule 7, part 1—"Footwear . . .," states that footwear made of "synthetic rubber as well as natural rubber and also of plastics" is embraced in 700.50 (now 700.53), and "A very large part of footwear covered by this item is commonly referred to as 'waterproof' footwear."[1] The exemplars of what is intended to be included are "Hunting boots, galoshes, rainwear, and other footwear designed to be worn over or in lieu of other footwear as a protection against water . . ."[2]

It is stated on page 24 of the said report that " . . . item 700.55 would also include molded plastic shoes (*other than those of the so-called waterproof type provided for in item 700.50*" (now 700.53). [Emphasis supplied.] The underscored langauge seems to indicate an intention to exclude molded plastic shoes like exhibit 1 from item 700.55 and contain them in what is now item 700.53.

Also, page 25 of the said report indicates that " 'waterproof' footwear provided for in item 700.50" (now 700.53) is separated from the "non-waterproof" footwear provided "in item 700.55."

Section 57 of Public Law 89–241 enacted October 7, 1965, in substituting item 700.53 for item 700.50, indicated that the "other" footwear covered in the item had reference to "protective footwear,"

[1] Tariff Classification Study, Schedule 7, p. 23.
[2] *Ibid.*

and the legislative history indicates the object of the legislation is to cover "waterproof footwear" which competes with other such or similar footwear domestically produced.[2]

The plaintiff places much emphasis on its argument that the imported merchandise is not *ejusdem generis* with the enumerated exemplars—hunting boots, galoshes and rainwear. *Ejusdem generis* means literally "of the same kind." The imported merchandise must possess the particular characteristic which unites all of the exemplars in order to be classified in the item containing the exemplars. *Kotake Co., Ltd., American Customs Brokerage Co.* v. *United States*, 58 Cust. Ct. 196, C.D. 2934, 266 F. Supp. 385 (1967). The courts use *ejusdem generis* as a rule to aid them in interpreting the intention of the legislature.

The common characteristic in the exemplars is that they are waterproof or water repellent and are worn in wet weather or wet areas, usually for protection against water. Exhibit 1 is waterproof and there is testimony that it is more similar to exhibit D, a vulcanized waterproof rubber shoe with metal spikes, then exhibit E, a welt leather golf shoe which is not waterproof. The most persuasive testimony is that exhibit 1 is a water shoe or a shoe worn mostly in wet weather, though it may be worn infrequently in fair weather.

Both the weight of the evidence and the legislative history which reconciles any apparent conflict between the two competing tariff items support the classification of exhibit 1 as "other footwear" which is *waterproof*, "*designed to be worn . . . in lieu of, other footwear as a protection against water*" (whether rain or dew), when playing golf; rather than an ordinary or general purpose golf shoe worn for playing golf in all kinds of weather. Plaintiff has not overcome the presumption of correctness attached to the district director's classification finding that the imported merchandise is dutiable under item 700.53, and its claim is overruled.

Judgment will be entered accordingly.

(C.D. 4557)

C. S. EMERY & COMPANY, INC. v. UNITED STATES

Stone products

Merchandise consisting of two-inch thick sawn slabs of black granite exported from Canada in 1964 was appraised on the basis of export value as defined in section 402(b) of the Tariff Act of

[2] The Tariff Schedules Technical Amendments Act of 1965, P.L. 89-241, 79 Stat. 933 (1965). See Senate Report No. 530, U.S. Code Congressional and Administrative News 1965, Vol. 2, p. 3416, at pp. 3434-3435.

1930, as amended. Plaintiff's claim that the correct dutiable value was the ex-quarry price of the granite slabs, $2.10 per square foot, and not $3.015 per square foot, net packed, as appraised, overruled.

The appraiser's finding of value carries a statutory presumption of correctness. It was therefore incumbent upon plaintiff to establish that the appraised value was erroneous, and that such or similar merchandise was freely sold or, in the absence of sales, offered for sale to all purchasers at wholesale in the principal markets of Canada in the usual wholesale quantities and in the ordinary course of trade for exportation to the United States at the ex-quarry price of $2.10 per square foot. The record contains no evidence that such or similar merchandise was actually sold or offered for sale for export to the United States at an ex-quarry price during the period in issue. Plaintiff's willingness to sell ex-quarry to the defendant or to anyone else does not meet the requirements of export value as defined in the statute. See *United States* v. *Bud Berman Sportswear, Inc.*, 66 Cust. Ct. 628, A.R.D. 287 (1971), *aff'd*, 469 F. 2d 1107, 60 CCPA 34, C.A.D. 1077 (1972). Also, evidence of sales made in the home market to a Canadian purchaser several months after the merchandise at bar was exported has no weight in establishing either the price at which it was freely sold or offered for sale for *export* to the United States, or what the price was "at the time of exportation" as required by section 402(b). See *The A. W. Fenton Co., Inc.* v. *United States*, 61 Cust. Ct. 437, R.D. 11556 (1968), *application for review dismissed*, 61 Cust. Ct. 613, A.R.D. 246 (1968).

Court No. R67/913

Port of Derby Line, Vermont

[Judgment for defendant.]

(Decided August 27, 1974)

Barnes, Richardson & Colburn **(*Joseph Schwartz* and *Irving Levine* of counsel) for the plaintiff.**

Carla A. Hills, **Assistant Attorney General (*James Caffentzis,* trial attorney), for the defendant.**

RE, Judge: In this appeal for reappraisement the merchandise consists of two-inch thick sawn slabs of black granite exported from Canada on July 30, 1964 and entered at the border port of Derby Line, Vermont. The granite was shipped by truck from Alma, Quebec by the seller, National Granite, Ltd (National) to the John Swenson Granite Co., Inc. (Swenson) at Concord, New Hampshire.

The customs and commercial invoices disclose that the granite was sold to Swenson at a delivered price ("FOB Concord N.H.") of U.S. $3.35 per square foot, including duties. It was entered at an invoiced unit value of U.S. $2.10 per square foot (selling price less claimed nondutiable charges of 97 cents per square foot for bracing and transportation, and 28 cents per square foot for duty and brokerage fees).

The merchandise was appraised on the basis of export value as defined in section 402(b), Tariff Act of 1930, as amended by the Cus-

toms Simplification Act of 1956, at U.S. $3.015 per square foot, net packed. According to the testimony of the appraiser, the appraised value was calculated by deducting 28 cents for duty and brokerage, and then deducting the freight charges within the United States from the border (Derby Line) to Barre, Vermont.

Plaintiff agrees that export value, section 402(b) *supra*, is the correct basis of appraisement, but contends that U.S. $2.10 per square foot, the alleged ex-quarry price of the granite slabs, represents the correct dutiable value. Plaintiff urges, alternatively, that if the appraiser's method of determining value is upheld, he should have made a larger allowance for duty, i.e., 36.416¼ cents which, with the uncontested deductions for brokerage and freight, would result in a dutiable value of U.S. $2.91⅓ per square foot, net packed.

The record consists of the official papers, the testimony of two witnesses called by plaintiff, and four exhibits also submitted by plaintiff.

Mr. Paul Robitaille, president and general manager of National, who supervised production, administration and sales, testified that National produces rough, semifinished and finished granite mainly for building work; that the imported granite came from a quarry located about 25 miles from its office in Alma, Quebec; and that the shipment herein was delivered pursuant to a contract (exhibit 1) with Swenson for the sale of granite slabs and blocks to be used in construction of a building in New York City. National used its own trucks and braces to transport most of the merchandise to Concord. Swenson, which has finishing facilities in Concord, New Hampshire, put the finish on the rough sawn slabs and cut them to size, ready for installation in the building then under construction.

The contract, which is dated March 21, 1963, in relevant part, provided that National "deliver sufficient wire sawed slabs so that Swenson may fabricate therefrom * * * approximately 190,000 net square feet of 2 inch thick stones * * *." Delivery of the two-inch slabs was to commence on or about February 20, 1963 in quantities of "approximately 5,000 net square feet of 2 inch slabs each week until completion." Deliveries, Mr. Robitaille testified, commenced early in 1963 and ended about two years later.

The agreement called for payment of U.S. $3.35 per net square foot for two-inch slabs "delivered to and accepted by Swenson" with the proviso that—

> "(8) The prices for slabs set forth in paragraph (7) include the costs of delivery to Swenson at its plants in Concord, New Hampshire. If Swenson shall direct delivery of slabs to other

fabricating plants in New England, the prices shall be adjusted to reflect any increase or decrease in the cost to National of delivery. * * *"

The contract provided that National could bill Swenson at the rate of $2.50 per square foot for any slabs in stock it had on hand at the end of any month. It also provided that in the event Swenson terminated the agreement for any cause except breach or default by National, Swenson would pay $2.50 per square foot for all slabs produced by National and in stock in Canada.

Mr. Robitaille, who had participated in the contract negotiations with Swenson, said that National "tried to arrive at a higher price, of course, and we came to this final price" of $3.35 per square foot. He had estimated that National would make a profit on the $3.35 price by figuring on 50 cents per foot for material, $1.50 for labor and 25 cents for depreciation and profit, which came to $2.25 in Canadian currency and $2.10 in United States currency. He then arrived at the $3.35 figure by adding 97 cents to cover the cost of bracing and transportation down to Swenson's plant, and 28 cents for duty and brokerage fees.

Mr. Robitaille testified that bracing was necessary to protect the brittle granite slabs against breakage during shipment. He admitted, on cross-examination, that in establishing a "cost of the price for the Swenson order, I took into consideration the volume of the job and the size of the stone."

The witness "would" have sold the merchandise ex-quarry to Swenson at a price of U.S. $2.10 per square foot. However, since the slabs were brittle and subject to excessive breakage if hauled by inexperienced people, Swenson wanted a delivered price so that National would be responsible for breakage.

Mr. Robitaille testified that, during the 1963–1965 period that National was delivering granite to Swenson, it had quoted a price of $2.25 per square foot, Canadian Currency, f.o.b. its plant to a Canadian firm for black granite slabs similar to those in issue. It produced three invoices (exhibits 2, 3 and 4) for sales in December 1964 and February 1965 of two-inch black granite slabs at $2.25 per square foot to a firm in Quebec.

The witness was willing to sell the material at the $2.25 price to anybody at that time. But he could "not recall" whether he sold similar slabs to other firms during this period, stating that "[t]hese [Quebec invoices] are the only invoices we found." However, he noted that "[i]t does not mean that we did not sell more." He subsequently stated under cross-examination that he could not recall sales in 1963, but that "[w]e had other customers in 1964, I think," which sales were made "[p]robably by written orders."

When asked if he had entered into written agreements during 1965 with purchasers other than Swenson for the sale of two-inch granite slabs, Mr. Robitaille replied "[p]ossibly, but I do not recall either." Upon further questioning, he agreed that during 1963, 1964 and 1965 he sold to others than Swenson; that the sales were usually in the form of a written order; and that he would keep a copy of the order "[f]or a certain period of time * * *." However, he could not produce any contracts or memoranda of the sales made during this period.

The witness explained that it was not possible to have price lists, and that National seldom gave standard prices because they "vary with the type of granite, the finishes, the thicknesses, and the work involved in the stone."

Mr. Robitaille stated that the provision in the Swenson contract for payment of $2.50 per net square foot, for all undelivered slabs National had on hand at the end of the month, covered storage costs. It was also intended to assist National financially since its plant had burned down and the machinery had to be rebuilt. The provision for payment of $2.50 per net square foot, in the event of Swenson's default, for all slabs on hand was intended as compensation to National for spending "so much money to build machinery and equip a plant."

Mr. William L. Thornton, the district director at St. Albans, Vermont, testified he had personally appraised the shipments of granite, including the one at bar, imported under the Swenson contract. The appraised value was arrived at as follows:

> "They started off at $3.35, and the information I had at the time was that the brokerage and duty amounted to 28¢, and the difference between the two nets would be the inland freight. I allowed the freight only within the United States."

Although the entry papers show that the merchandise went to Concord, New Hampshire, Mr. Thornton deducted the prorated freight charge between Derby Line, Vermont and Barre, Vermont, stating that "a lot of them [shipments to Swenson] stopped off in Barre." He made the same deduction in all of the granite shipments from National.

The witness stated that he had customs agents make inquiries as to how National sold the granite. Since no information was available, that it sold at ex-quarry prices, he used the delivered sales price of $3.35 in making the appraisements.

As to its first cause of action, plaintiff contends that under the export value formula it has established that the proper dutiable value for the imported granite is U.S. $2.10 per square foot ($2.25 per square foot, Canadian currency).

Export value is defined in section 402(b), as amended, *supra*, as follows:

"(b) EXPORT VALUE.—For the purposes of this section, the export value of imported merchandise shall be the price, at the time of exportation to the United States of the merchandise undergoing appraisement, at which such or similar merchandise is freely sold or, in the absence of sales, offered for sale in the principal markets of the country of exportation, in the usual wholesale quantities and in the ordinary course of trade, for exportation to the United States, plus, when not included in such price, the cost of all containers and coverings of whatever nature and all other expenses incidental to placing the merchandise in condition, packed ready for shipment to the United States."

The phrase "freely sold or, in the absence of sales, offered for sale," in section 402(f)(1), Tariff Act of 1930, as amended, insofar as pertinent herein, means sold or, in the absence of sales, offered:

"(A) to all purchasers at wholesale, or

* * * * * * *

without restrictions as to the disposition or use of the merchandise by the purchaser, except restrictions as to such disposition or use which (i) are imposed or required by law, (ii) limit the price at which or the territory in which the merchandise may be resold, or (iii) do not substantially affect the value of the merchandise to usual purchasers at wholesale."

The appraiser's finding of value carries a statutory presumption of correctness (28 U.S.C. § 2633, superseded by 28 U.S.C § 2635 by the Customs Courts Act of 1970, Pub. L. 91–271). It was, therefore, incumbent upon plaintiff to establish, by competent satisfactory evidence, that the appraised value was erroneous, and that such or similar merchandise was freely sold or, in the absence of sales, offered for sale to all purchasers at wholesale in the principal markets of Canada in the usual wholesale quantities and in the ordinary course of trade for exportation to the United States at the alleged ex-quarry price of U.S. $2.10, or $2.25, Canadian currency.

The record does not contain the required proof, and the presumption of correctness has not been rebutted. There is no evidence that such or similar merchandise was actually sold or ever offered for sale for export to the United States at an ex-quarry price during the period in issue. Although Mr. Robitaille stated that National "would" have accepted an ex-quarry price of U.S. $2.10 from Swenson or "anybody," he never testified that National actually sold two-inch granite slabs for export to the United States at such price during the period in issue; nor was he able to recollect the price quoted on slabs at that time.

It is proper to note the witness' admission that similar granite slabs were sold for export to the United States in 1964 and 1965 and his failure to produce any documents relating to those transactions. He

did, however, have on hand invoices showing sales at an ex-quarry price ($2.25 Canadian currency) to a Canadian firm in those years. Under the circumstances, his unexplained failure to offer evidence of the price at which the sales of granite slabs for export to this country were made warrants an inference unfavorable to plaintiff's claim.

Furthermore, Mr. Robitaille's willingness to sell ex-quarry to Swenson or anybody else does not meet the requirements of export value as defined in the statute. The export value formula addresses itself to the realities of the marketplace, that is, it contemplates a market value that is established by what is *actually* done in terms of sales and offers of sale, not by mere possibilities. Thus it is well settled that neither willingness to sell merchandise at a particular price, nor the fact that it could have been sold at a particular price, is evidence of a price. *United States* v. *Bud Berman Sportswear, Inc.*, 66 Cust. Ct. 628, A.R.D. 287 (1971), *aff'd*, 469 F.2d 1107, 60 CCPA 34, C.A.D. 1077 (1972); *Delmonico International Corp.* v. *United States*, 52 Cust. Ct. 656, A.R.D. 176 (1964). See also *Ontario Stone Corporation* v. *United States*, 319 F. Supp. 923, 65 Cust. Ct. 753, R.D. 11727 (1970).

Finally, evidence of sales made in the home market to a *Canadian* purchaser four and six months after the merchandise at bar was exported has no weight in establishing either the price at which it was freely sold or offered for sale for *export* to the United States or, indeed, what the price was "at the time of exportation" of the subject merchandise, as required by section 402(b) *supra*. See *United States* v. *Robert Reiner, Inc.*, 35 CCPA 50, C.A.D. 370 (1947); *The A. W. Fenton Co., Inc.* v. *United States*, 61 Cust. Ct. 437, R.D. 11556 (1968), *application for review dismissed*, 61 Cust. Ct. 613, A.R.D. 246 (1968); *Sam Yeung Co.* v. *United States*, 52 Cust. Ct. 572, 575, R.D. 10760 (1964).

In the absence of any showing that the merchandise was freely sold for export to the United States to all purchasers at wholesale on an ex-quarry basis, plaintiff must fail on its first claim since it has failed to sustain its burden of proof.

For its alternative claim, plaintiff accepts the appraiser's presumptively correct determination that the export value for the merchandise is the delivered price of U.S. $3.35 per square foot less nondutiable charges consisting of duty, brokerage, and freight charges within the United States. It contends, however, that the customs officer failed to deduct a sufficient amount for the duty.

For purposes of this claim plaintiff relies upon the principle that a party may challenge one or more of the elements entering into an appraisement while relying upon the presumption of correctness of the appraiser's return as to all other elements. *United States* v. *Fritzsche Bros., Inc.*, 35 CCPA 60, C.A.D. 371 (1947); *Ontario Stone Corpora-*

tion v. *United States*, 319 F. Supp. 923, 65 Cust. Ct. 753, R.D. 11727 (1970); *Alvin Naiman Corporation* v. *United States*, 54 Cust. Ct. 705, R.D. 11008 (1965). Where, as here, the appraisement was made by working backward from a delivered price in Concord, New Hampshire to a price at the Canadian border, and there is no dispute as to which charges were deducted, the appraisement is deemed to be separable. *Ontario Stone Corporation* v. *United States*, *supra; Alvin Naiman Corporation* v. *United States*, *supra*. Accordingly, plaintiff may challenge the deduction for duty, while relying upon the presumption of correctness attaching to the other elements of the appraisement. *Alvin Naiman Corporation* v. *United States*, *supra*.

The appraiser had arrived at a value of $3.015 per square foot by deducting 28 cents per square foot for duty and brokerage from $3.35, and deducting an additional 5.5 cents per square foot (the difference between $3.07 and $3.015) for the freight charges from the port of entry, Derby Line, Vermont, to Barre, Vermont. It is not disputed that the allowance of 28 cents includes 1.75 cents for brokerage and 26.25 cents for duty. The duty figure was based on the apparently applicable rate of duty of 12.5 per centum ad valorem [1] upon the entered value of $2.10.

Plaintiff expressly concedes that the amount of duty figured in the delivered duty-paid price of $3.35 was 26.25 cents (based on 12.5 percent of $2.10), and that the special customs invoice states that the "selling price of 3.35 includes * * * .28 per foot for duty and brokerage fees." It claims, nonetheless, that the "included" duty should be based on 12.5 percent of $3.2775, that is, the delivered price of $3.35 less 5.5 cents freight, less 1.75 cents brokerage. This would result, according to plaintiff's calculations, in a deduction of 36.416¼ cents per square foot for duty, leaving a dutiable value of $2.91⅓ per square foot, United States currency, net packed.

Plaintiff argues that "[s]ince this figure [$3.2775] includes 12.5% duty, when divided by 112.5%, the result is equal to the dutiable value less included duty at 12.5%."

Plaintiff is in error as to the nature of the deductions allowed under the export value statute. The value contemplated under section 402(b), as amended, is the *per se* price of the goods in the principal markets of the country of exportation, plus the cost of packing and other expenses incidental to placing the goods in condition for shipment. Thus,

[1] The entry papers disclose that the granite slabs had been entered by the importer and advisorily classified by customs as dutiable at 12.5 per centum ad valorem under TSUS item 513.74, which provides, among others, for articles of granite, sawed, suitable for use as monumental, paving or building stone. It may be noted that merchandise entered prior to the effective date of the Customs Courts Act of 1970, Pub. L. 91-271 is not liquidated until the appraisement becomes final. *New York Merchandise Co., Inc.* v. *United States*, 51 Cust. Ct. 255, Abs. 68111 (1963). Hence, the subject importation, which is before the court on an appeal for reappraisement, has only been "advisorily" classified.

charges accruing subsequent to the time of shipment are not ordinarily included in dutiable export value and, where the goods, as here, are sold at a c.i.f. duty-paid price, the duty may not be included. *Josef Mfg., Ltd.* v. *United States*, 294 F. Supp. 956, 62 Cust. Ct. 763, R.D. 11616 (1969), *aff'd*, 314 F. Supp. 51, 64 Cust. Ct. 865, A.R.D. 274 (1970), *aff'd*, 460 F.2d 1079, 59 CCPA 146, C.A.D. 1057 (1972); *The A. W. Fenton Co., Inc.* v. *United States*, *supra*. Accordingly, only the actual duties which comprised part of the selling price are deductible.

It is clear from the foregoing that the amount claimed by plaintiff is unrealistic and, if allowed, would result in a dutiable value that bears no relationship to the actual transaction. On the other hand, Mr. Thornton's allowance of 26.25 cents, which equals the actual amount included for duties in the $3.35 price, comports with the statutory requirements and was entirely proper. Therefore, plaintiff has failed to establish its alternative claim.

The court also considered plaintiff's contention that the appraisement herein is erroneous because Mr. Thornton testified to making the same deductions in appraising all of the shipments of two-inch granite slabs delivered under the Swenson contract, although some importations, including the instant one, went to Concord, New Hampshire and the others went to Barre, Vermont.

Plaintiff relies, in its argument, upon *United States* v. *Josef Mfg., Ltd.*, 460 F.2d 1079, 59 CCPA 146, C.A.D. 1057 (1972). The *Josef* case dealt with two shipments of dresses imported from Canada at Champlain, New York, one of which was destined for Florida, and the other for Illinois. Both shipments, which were of different weights, had been sold at uniform c.i.f. delivered prices, including all charges, freight and duty. Utilizing export value as the basis of valuation, the appraiser took the uniform c.i.f. prices, deducting in each case the identical freight charge from Montreal to New York. This, however, did not represent the actual freight paid in either shipment, since, because of the different destinations, each freight charge differed.

The appellate court agreed with the holding of the trial judge that the freight deductions were erroneous because they did not represent the actual freight charges, and that uniform c.i.f. prices, which included freight charges that were variable depending upon the location of the customer, could not be used as a basis for appraisement because they negated the existence of a single home market price for the merchandise—a prerequisite for a determination of statutory export value. This is explained in the following statement of the court:

> "We also agree that the appraiser could not make the exporter's uniform c.i.f. prices usable as the basis for statutory appraisement merely by deducting therefrom the freight from Montreal to the New York border. Even if the appellee did not rebut the presump-

> tion of administrative correctness by its witness's somewhat ambiguous testimony that the appraiser's deductions were 'not the actual freight paid on this shipment' and assuming that the actual freight charges for transporting two cartons, one weighing 6 lbs. 3 oz. and one weighing 26 lbs., from Montreal to Champlain, N.Y. were both $7.88, the c.i.f. prices of the two customers involved here still included the costs of shipping the goods from Champlain to Chicago, Ill., and Miami Beach, Fla., respectively. Necessarily that means that the prices of the goods per se were not the same to the two customers, or to various other customers in various other parts of the United States. Accordingly, there was no uniform price for the imported *goods*, as distinguished from a uniform price for the package consisting of the goods, the freight, and the insurance, and no individual price, or average price, will substitute for such a uniform price under the statutory scheme, * * *" (Emphasis in original.) 59 CCPA at 150.

The *Josef* case differs markedly in its factual aspects from that at bar. There is only one shipment in this case, and, while Mr. Thornton testified to making identical deductions in the other entries of two-inch granite slabs shipped under the Swenson contract, it is not clear from his statements that the c.i.f. delivered price was the same in all shipments, regardless of destination. The uncertainty is compounded by the terms of the agreement (exhibit 1) which provide in paragraph 8 that—

> "The prices for slabs set forth in paragraph (7) include the costs of delivery to Swenson at its plants in Concord, New Hampshire. If Swenson shall direct delivery of slabs to other fabricating plants in New England, the prices shall be adjusted to reflect any increase or decrease in the cost to National of delivery. * * *"

Thus, under the contract the c.i.f. delivered price would vary in accordance with the differing delivery costs to National if Swenson had the slabs delivered elsewhere than to its plant in Concord, New Hampshire. There is no indication in the record that a price adjustment was not so made to reflect the differing delivery cost, if any, to National when the merchandise was shipped to Barre, Vermont, or that the appraiser did not use the adjusted c.i.f. prices in appraising those shipments. Therefore, in the absence of competent evidence that the goods were sold at a uniform c.i.f. price regardless of the place of delivery, the holding in the *Josef* case, as to the nonexistence of a single home market price, is not applicable.

The appraiser's error, if any, lies in deducting the freight charges from Derby Line, Vermont to Barre, Vermont rather than to Concord, New Hampshire, the place of delivery. While delivery charges often vary according to destination, in this record there is not a scintilla of evidence as to the actual difference in the cost to National of trucking the merchandise either to one place or the other, or that it was more

than *de minimis*. In the absence of testimony as to terrain, location, available highway routes and other essential data, the court cannot make appropriate findings.

Furthermore, having specifically adopted the appraiser's return, plaintiff has not challenged the amount deducted for freight. Therefore, as plaintiff has failed to meet its dual burden of establishing error in the appraisement, and the correctness of its claimed value, the appraisement must stand. *Minkap of California, Inc.* v. *United States*, 55 CCPA 1, C.A.D. 926 (1967); *Kobe Import Co.* v. *United States*, 42 CCPA 194, C.A.D. 593 (1955).

In view of the foregoing, the appraised value is affirmed.

Judgment will be entered accordingly.

Decisions of the United States Customs Court

Abstracts

Abstracted Protest Decisions

DEPARTMENT OF THE TREASURY, *September 3, 1974.*

The following abstracts of decisions of the United States Customs Court at New York are published for the information and guidance of officers of the customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to customs officials in easily locating cases and tracing important facts.

VERNON D. ACREE,
Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/632	Landis, J. August 28, 1974	J. Gerber & Co., Inc	69/48866	Item 610.80 15.5%	Item 608.25 8.5%	Judgment on the pleadings J. Gerber & Co., Inc., et al. v. U.S. (C.D. 3773, aff'd C.A.D. 1013)	Jacksonville Steel forgings

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/633	Watson, J. August 28, 1974	S. Berger Import & Mfg. Corp.	71-12-01936	Item 748.20 23.5% or 22% (items marked "B" and "C")	Item 774.60 11.5% or 10% (items marked "B" and "C")	Joseph Markovits, Inc. v. U.S. (C.D. 4306) (items marked "B") First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) (items marked "C")	New York Ferns, in c.v. of plastic (items marked "B") Fern clusters, in c.v. of plastic (items marked "C")
P74/634	Watson, J. August 28, 1974	Robert Bosch Corp.	68/23548	Item 685.90 17.5%	Item 683.60 8.5%	Judgment on the pleadings Robert Bosch Corp. et al v. U.S. (C.D. 3881)	San Francisco Starter solenoid switches
P74/635	Watson, J. August 28, 1974	James A. Cole, Inc.	71-10-01281	Item 748.20 25%	Item 774.60 13.5%	Armbee Corporation et al. v. U.S. (C.D. 3278) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4306)	Los Angeles Artificial flowers, etc.
P74/636	Watson, J. August 28, 1974	First American Artificial Flowers, Inc.	72-2-00406	Item 748.20 26.5%	Item 774.60 15%	Armbee Corporation et al. v. U.S. (C.D. 3278) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4306)	San Francisco Artificial flowers, etc.

P74/637	Watson, J. August 28, 1974	New York Merchandise Co., Inc.	68/54945, etc.	Item 748.20 26.5% (items marked "A" and "B")	Item 774.60 15% (items marked "A" and "B")	Armbee Corporation et al. v. U.S. (C.D. 3278); Zunold Trading Corporation et al. v. U.S. (C.D. 3279) (items marked "A") Joseph Markovits, Inc. v. U.S. (C.D. 4396) (items marked "B")	San Diego Merchandise in c.v. of plastic (items marked "A" and "B")
P74/638	Newman, J. August 28, 1974	Andre & Co., Inc.	73-10-02990	Item 653.39 19% (items marked "A" and "B")	Item 686.80 4% on basis of export value; said value is $0.12 each, net packed (bulbs marked "A") Item 653.39 19% on basis of export value; said value is appraised value less $0.12 each, net packed (lamps marked "A") Item 772.15 8.5% (items marked "B")	Mobilite, Inc. v. U.S. (C.D. 4478) (items marked "A") Agreed statement of facts (items marked "B")	Chicago Lamps, Model U-370-A—high-intensity lamps and bulbs, imported together, dutiable separately (items marked "A") Lamps, Models BC-3, RA-4 and RA-5—lamps in c.v. of plastic, chiefly used in household (items marked "B")
R74/639	Newman, J. August 28, 1974	Robert Bosch Corp. and Arthur J. Fritz & Co.	68/47045	Item 682.30 12.5%	Item 692.27 8.5%	Judgment on the pleadings	San Francisco Wiper motors
R74/640	Newman, J. August 28, 1974	Robert Bosch Corp. and Arthur J. Fritz & Co.	68/49709	Item 682.30 12.5%	Item 692.27 8.5%	Judgment on the pleadings	San Francisco Wiper motors

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/641	Newman, J. August 28, 1974	Robert Bosch Corp. and Arthur J. Fritz & Co.	70/47148	Item 682.30 12.5%	Item 692.27 8.5%	Judgment on the pleadings	San Francisco Wiper motors
P74/642	Newman, J. August 28, 1974	Casavant Freres, Ltd.....	72-6-01449	Item 737.90 17.5%	Item 207.00 8%	Agreed statement of facts	Champlain-Rouses Point (Ogdensburg) Letters and numerals of wood, not chiefly used for amusement of children or adults
P74/643	Newman, J. August 28, 1974	Fuel Injection Sales & Services, Inc.	68/15764	Item 660.94 10%	Item 660.92 6%	Korody-Colyer Corp. v. U.S. (C.D. 4212)	New York Nozzels for fuel injection pumps.
P74/644	Newman, J. August 28, 1974	Hurricane Import Co.....	64/1434, etc.	Par. 409 25½% (items marked "A" and "B")	Par. 412 17% (items marked "A") Par. 412 10½% (items marked "B")	Hurricane Import Co. et al. v. U.S. (C.D. 4173) (items marked "A"). Agreed statement of facts (items marked "B")	Honolulu Partly finished rattan chair frames (items marked "A") Partly finished rattan sofas and sectionals (items marked "B")

P74/645	Newman J. August 28, 1974	Republic Transistor Corp. et al.	66/77608, etc.	Item 706.08 or 791.65 20% (items marked "A" Item 684.70 15% (items marked "B")	Item 685.22 12.5% (items marked "A" and "B")	Agreed statement of facts (items marked "A" and "B")	New York Cases imported with and used as containers for radios with which imimported (items marked "A") Earphones imported with and chiefly used as parts of radio reception apparatus (items marked "B")
P74/646	Newman, J. August 28, 1974	Daniel F. Young, Inc.	67/18864	Item 366.30 40%	Item 387.30 13.5%	Summary judgment, Hedaya Bros. v. U.S. (C.D. 3888)	New York 100% linen towels, Jadwiga 16½"x29" FS-plain
P74/647	Re, J. August 28, 1974	Victor B. Handal & Bros., Inc.	69/35443	Item 772.15 17%	Item 772.35 10%	Venetianaire Corp. of America v. U.S. (C.A.D. 1084)	Los Angeles Mattress and pillow covers
P74/648	Re, J. August 28, 1974	C. Tennant Sons & Co.	68/40449, etc.	Item 772.15 15%, 13.5% or 11%	Item 772.35 11%, 10% or 8.5%	Venetianaire Corp. of America v. U.S. (C.A.D. 1084)	New York Plastic mattress covers, pillow covers protectors

Decisions of the United States Customs Court

Abstracts

Abstracted Reappraisement Decisions

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R74/299	Re, J. August 26, 1974	Aircargo Brokerage Co.	R58/18836	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Miami Japanese plywood
R74/300	Re, J. August 26, 1974	D.C. Andrews & Co. of LA, Inc., et al.	R60/16100, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	New Orleans Japanese plywood
R74/301	Re, J. August 26, 1974	Atkins, Kroll & Co. et al.	R59/5867, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	San Francisco Japanese plywood
R74/302	Re, J. August 26, 1974	Balfour, Guthrie & Co., Ltd.	R61/7385	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Baltimore Japanese plywood
R74/303	Re, J. August 26, 1974	Geo. S. Bush & Co., Inc., et al.	R58/21092, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Longview (Portland, Oreg.) Japanese plywood

R74/304	Re, J. August 26, 1974	Geo. S. Bush & Co., Inc., et al.	R50/11377, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Portland, Oreg. Japanese plywood
R74/305	Re, J. August 26, 1974	Geo. S. Bush & Co., Inc.	R59/18900, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Portland, Oreg. Japanese plywood
R74/306	Re, J. August 26, 1974.	Davis, Turner & Co. et al.	R58/25876, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	New York Japanese plywood
R74/307	Re, J. August 26, 1974	Frank P. Dow Co., Inc.	R60/1605	Export value: Net appappraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Portland, Oreg. Japanese plywood
R74/308	Re, J. August 26, 1974	Getz Bros. & Co. et al.	R60/6374, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Tampa Japanese plywood
R74/309	Re, J. August 26, 1974	Getz Bros. & Co.	R61/15139	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	San Diego Japanese plywood
R74/310	Re, J. August 26, 1974	B. A. McKenzie & Co., Inc., et al.	R58/21828, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Tacoma (Seattle) Japanese plywood
R74/311	Re, J. August 26, 1974	R. P. Oldham Co.	R58/10134	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Galveston Japanese plywood
R74/312	Re, J. August 26, 1974	Pan Pacific Overseas Corp.	R61/2944, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Charleston, S.C. Japanese plywood

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R74/313	Re, J. August 26, 1974	E. F. Philbin	R61/3468, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	New Orleans Japanese plywood
R74/314	Re, J. August 26, 1974	Toyomenka, Inc.	R58/10389, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Los Angeles Japanese plywood
R74/315	Watson, J. August 28, 1974	A & A Trading Corp.	73-9-02614	Export value: Appraised values less amounts described as "commission"	Not stated	A & A Trading Corp. v. U.S. (C.D. 4472)	Fort Worth (Houston) All merchandise imported under subject entries
R74/316	Re, J. August 29, 1974	Atkins, Kroll & Co., Ltd., et al.	R58/18408, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Philadelphia Japanese plywood
R74/317	Re, J. August 29, 1974	Atkins, Kroll & Co., Ltd., et al.	R59/1946, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Norfolk Japanese plywood
R74/318	Re, J. August 29, 1974	Atkins, Kroll & Co., Ltd., et al.	R59/9240, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	New York Japanese plywood
R74/319	Re, J. August 29, 1974	Atkins, Kroll & Co., Ltd., et al.	R64/3758, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Newport News—Norfolk Japanese plywood
R74/320	Re, J. August 29, 1974	Balfour, Guthrie & Co., Ltd.	R58/16630, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Longview (Portland, Oreg.) Japanese plywood

R74/321	Re, J. August 29, 1974	Biddle Purchasing Co.	R61/9910, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	New Orleans Japanese plywood
R74/322	Re, J. August 29, 1974	Blanchard Lumber Co. of Portland, Oregon.	R63/6948, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Miami Japanese plywood
R74/323	Re, J. August 29, 1974	Geo. S. Bush & Co., Inc., et al.	R58/22512, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Portland, Oreg. Japanese plywood
R74/324	Re, J. August 29, 1974	The East Asiatic Co., Inc., et al.	R58/20483, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Norfolk Japanese plywood
R74/325	Re, J. August 29, 1974	J. Gerber & Co., Inc.	278488-A, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Boston Japanese plywood
R74/326	Re, J. August 29, 1974	Getz Bros. & Co. et al.	R58/10374, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	San Diego Japanese plywood
R74/327	Re, J. August 29, 1974	Getz Bros. & Co. et al.	R58/17708, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	San Francisco Japanese plywood
R74/328	Re, J. August 29, 1974	W. R. Grace & Co. et al.	R59/11327, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Longview (Portland, Oreg.) Japanese plywood
R74/329	Re, J. August 29, 1974	Harman Plywood & Lumber Co. et al.	R58/27731, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Seattle Japanese plywood

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R74/330	Re, J. August 29, 1974	Marubeni Iida (New York), Inc., et al.	R59/5717, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	New York Japanese plywood
R74/331	Re, J. August 29, 1974	Robert S. Osgood et al.	R61/7220, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Boston Japanese plywood

Tariff Commission Notice

Investigations by the United States Tariff Commission

DEPARTMENT OF THE TREASURY, *September 9, 1974.*

The appended notice relating to investigations by the United States Tariff Commission is published for the information of Customs Officers and others concerned.

VERNON D. ACREE,
Commissioner of Customs.

[337–L–75]

CERTAIN ELECTRONIC PRINTING CALCULATORS

Notice of complaint received

The United States Tariff Commission hereby gives notice of the receipt on August 1, 1974, of a complaint under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), filed by Addmaster Corporation, of San Gabriel, California, alleging unfair methods of competition and unfair acts in the importation and sale of certain electronic printing calculators by reason of their being embraced within the claim(s) in U.S. Patent No. 3,094,278 owned by the complainant. Eiko Business Machines Company, Ltd., P.O. Box 24, Trade Center, Tokyo 105, Japan, and Unitrex of America, Inc., 350 5th Avenue, New York City, New York, have been named as either offering for sale or importing the subject product.

In accordance with the provisions of section 203.3 of its Rules of Practice and Procedure (19 C.F.R. 203.3), the Commission has initiated a preliminary inquiry into the issues raised in the complaint for the purpose of determining whether there is good and sufficient reason for a full investigation, and if so whether the Commission should recommend to the President the issuance of a temporary exclusion from entry under section 337(f) of the Tariff Act.

A copy of the complaint is available for public inspection at the Office of the Secretary, United States Tariff Commission, 8th and E Streets, NW., Washington, D.C., and at the New York office of the Tariff Commission located at 6 World Trade Center.

Information submitted by interested persons which is pertinent to the aforementioned preliminary inquiry will be considered by the Commission if it is received not later than October 14, 1974. Extensions of time for submitting information will not be granted unless good and sufficient cause is shown thereon. Such information should be sent to the Secretary, United States Tariff Commission, 8th and E Streets, NW., Washington, D.C. 20436. A signed original and (19) true copies of each document must be filed.

By order of the Commission:

KENNETH R. MASON,
Secretary.

Issued August 28, 1974.

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